

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
ORANGEBURG DIVISION**

Amy O’Berry,)	
)	
Plaintiff,)	Civil Action No. 5:21-2443-RMG
)	
vs.)	
)	
Kilolo Kijakazi, Acting Commissioner of Social Security,)	
)	ORDER
Defendant.)	
)	
)	
)	

This matter comes before the Court for judicial review of the final decision of the Commissioner of Social Security denying Plaintiff’s application for Disability Insurance Benefits (“DIB”). In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to the United States Magistrate Judge for pretrial handling. The Magistrate Judge issued a Report and Recommendation (“R & R”) on July 11, 2022, recommending that the decision of the Commissioner be reversed and remanded to the agency because the Administrative Law Judge improperly relied upon objective medical evidence to discredit Plaintiff’s fibromyalgia related subjective symptoms. (Dkt. No. 13). Despite the fact that the ALJ recognized Plaintiff’s severely compromised physical condition due to her fibromyalgia, the claimant’s subjective complaints of severe, disabling pain and other fibromyalgia related symptoms were discounted because there were various entries in the record suggesting some days were better than others. Thus, the ALJ concluded that the Plaintiff’s statements were “inconsistent” with the “objective medical evidence.” (Dkt. No. 4-2 at 23, 26, 29). The

discounting of the subjective complaints of a claimant with the severe impairment of fibromyalgia because of the lack of “objective evidence” plainly violates the Fourth Circuit’s holding in *Arakas v. Commissioner, Social Security Administration*, 983 F. 3d 83, 97-96 (4th Cir. 2020). The Magistrate Judge was clearly correct in finding that the Commissioner’s decision was inconsistent with the holding in *Arakas* and required reversal. The Commissioner has advised the Court she does not intend to file an objection to the R & R. (Dkt. No. 14).

Based on the foregoing, the Court **ADOPTS** the Report and Recommendation as the order of this Court, **REVERSES** the decision of the Commissioner pursuant to Sentence Four of 42 U.S.C. § 405(g), and **REMANDS** the matter to the Commissioner for further proceedings consistent with this order. Further, this application for disability has now been pending for nearly six years and the administrative review following reversal and remand must be expedited. Consequently, the Commissioner is directed to conduct another administrative hearing in this matter within 120 days and to issue a final Agency decision within 180 days.

AND IT IS SO ORDERED.

s/ Richard M. Gergel
Richard M. Gergel
United States District Judge

July 13, 2022
Charleston, South Carolina